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EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3622

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/308,017

Applicant(s)

LAUSCH, HOLGER

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Claims 1-43 have been examined.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, and 12-16, 18-21 and 30-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sizer et al (U.S. 5,923,252) in view of Frey (U.S. 5,138,638).

As per claim 1, Sizer et al teach:

A method for detecting customer behavior due to one of projected visual and projected audiovisual messages and for detecting a range of action of the projected messages (see column 7, lines 18-32):

“in that the messages are presented to the potential customers one of visually and audiovisually” (see abstract), and

Sizer et al fail to teach, “wherein in a detection range a number of potential customers is detected in direct sequence”. However, Frey teaches a system that counts all potential customers in a retail store, generates information about in and out shopper flow, and integrates this data with the store’s point of sale system (see column 1, lines 9-23 and column 3, lines 10-67). The system allows for “controlled tests to be conducted in paired media markets to accurately measure the increased traffic created

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by individual ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertising or special events delivered increased shopper units, and whether such increase in shopper units resulted in expected increased sales" (see column 3, lines 43-53). The data generated from the Frey invention, together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions. Frey's system may be used to measure the impact of competitor's advertising on a store's performance, and the data from the system may be used in determining the effectiveness of in-store promotions as well as merchandise placement within the store (see column 3, lines 42-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to analyze the impact of advertisements messages, as taught by Frey. Sizer mentions in lines 55-65 of column 1 that "prior art devices attempt to detect the presence of a person and to deliver a message to the person on detection of their presence. The problem with the majority of such devices, however, is that they do not operate to discriminate between people detected by the device. The message will be delivered whether or not the person has indicated any particular interest in the message or whether or not the person would be likely to be interested in the message". The Sizer invention provides a message delivery device that detects the presence of a person and delivers a message if the person shows interest and also uses demographics to target messages (see column 6, lines 11-15). Therefore, it would have been obvious to a person of ordinary skill in the

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art at the time the application was made, to know that Sizer would be an improvement to the old method of delivering advertising. Sizer may deliver advertisements whether or not the consumer has indicated any interest and the data generated from the Frey invention together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions.

Sizer et al fail to teach, “a number of actual buyers of bought products is detected and the detected numbers of the potential customers, the actual buyers and of the bought products are recorded and correlated.” However, Frey teaches a system that detects the number of actual buyers and what products they have bought, to help store managers identify problem areas and take corrective measures to improve store performance (see column 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would integrate its audiovisual marketing device to the store point of sale system, as taught by Frey. Knowing what customers buy would help the Sizer et al system to better target its advertisements.

As per claim 2, Sizer et al teach:

A method as claim 1, “wherein the detected numbers of at least two detection ranges are centrally registered and evaluated” (see column 7, lines 1-15).

As per claim 3, Sizer et al teach:

A method as claimed in claim 2, “wherein the mode of presenting the messages is centrally controlled” (see column 7, lines 1-15).

As per claim 4, Sizer et al teach:

An arrangement for detecting customers behavior due to one of projected visual and projected audiovisual messages and for detecting the range of action of the projected messages:

“wherein sensors are provided being associated to at least one range for detecting movements of the customers in said range” (see column 3, lines 17-19);

“a display is provided for presenting messages in said range”

“a cash box for is provided detecting bought products” and,

“a computer is provided for recording and evaluating the signals of the movements and the counting signals and for controlling said display”

Sizer et al fail to teach, “at least a first sensor is provided at an entry of said range for detecting in direct sequence first counting signals and at least a second sensor is provided at an exit of said range for detecting second counting signals”. However, Frey teaches a system that “generates highly reliable count information of in and out shopper flow” and where the “optics module device may be mounted overhead such as above the doorway where the customers enter and leave the store” (see column 3, lines 14-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to determine the effectiveness of advertisement messages, as taught by Frey. The Sizer invention would target and display advertisement to customers that show interest in products and Frey would display advertisements to all customers that enter the retail store. Therefore, the combination of Frey and Sizer would ensure that all customers that enter the store would be exposed to some kind of advertisements and it would target the advertisement when the system determines that a customer may be interested in a particular product.

As per claim 5, Sizer et al teach:

An arrangement according to claim 4,

“wherein two ranges connected with one another via a passage, at which at least a third sensor is provided, wherein the display is arranged in said first range and the products in said second range” (see column 5, lines 20-24).

As per claim 6, Sizer et al fail to teach:

An arrangement according to claims 4 or 5,

“wherein said second sensor at the exist is coupled to an electronic cash register.”

However, Frey teaches sensors at the store exit that detect the presence of potential buyers and which are coupled to an electronic cash register (see columns 3 and 4). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al sensor system would integrate this feature with the point of sale system, as taught by Frey. Integrating the sensors that detect the number of potential buyers with the point of sale system would help the Sizer et al system to better target the advertisements. It is more important for the Sizer system to know the number of shopper units in a store, as opposed to the number of people in the store. The parent and children as a group would constitute a single shopper unit because young children themselves would not be expected to make purchase. Connecting the sensors to cash register would be used in the Sizer invention to evaluate the store performance based, in part, on the conversion of actual customers to shopper units, as taught by Frey.

As per claim 7, Sizer et al teach:

An arrangement according to claim 6,

“wherein said computer includes an image storage for the display” (see column 7, lines 1-17).

As per claim 8, Sizer et al teach:

An arrangement according to claim 7, wherein said computer is in combination with computers of further arrangements to a central detection and evaluation unit” (see column 7, lines 1-17).

As per claim 10, Sizer et al fail to teach:

An arrangement according to claims 4 or 9, wherein the display is arranged in upright position”. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it. If the best position is upright, the Sizer et al’s display would be oriented to that position.

As per claims 12 and 15, Sizer et al fail to teach:

An arrangement according to claim 10, wherein the display is arranged inclinedly.” However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it. If the best position is inclined, the Sizer et al’s display would be oriented to that position.

As per claims 13 and 16, Sizer et al fail to teach:

An arrangement according to claim 10, wherein a plurality of displays are arranged in suitable manner.” However, it would have been obvious to a person of ordinary skill in the art at

the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it.

As per claim 14, Sizer et al teach:

An arrangement according to claim 4, wherein the same is cross-linked with at least a further same arrangement via a central station" (see column 7).

Claim 18 contains the same limitation as claim 1, therefore the same rejection is applied.

As per claim 19, Sizer et al teach:

A method for detecting customer behavior according to claim 18, wherein the message is one of a visual message and an audiovisual message (see abstract).

As per claim 20, Sizer et al fail to teach:

A method for detecting customer behavior according to claim 18, wherein a message is only projected to potential customers if the number of potential customers detected in direct sequence by the first sensor exceeds the number of potential customers that exit as detected by the second sensor. However, Frey teaches a system that, "generates highly reliable count information of in and out shopper flow" and where the "optics module device may be mounted overhead such as above the doorway where the customers enter and leave the store. From data generated from the system together with data from other store systems including the POS system, advertising and special event effectiveness may be evaluated" (see column 3, lines 14-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to determine the effectiveness of advertisement

messages, as taught by Frey. The Sizer invention would use the in and out sensors taught by Frey to determine the presence of potential customers, and to better deliver advertisements.

As per claim 21, Sizer et al teach:

A method for detecting customer behavior according to claim 18, wherein the step of recording and correlating data is via a worldwide link (see figure 5).

As per claim 30, Sizer et al teach:

A method for detecting customer behavior comprising the steps of:

providing one of an advertising space and a sales space between a first sensor and a second sensor, and an advertising space between the first sensor and the second sensor (see column 7, lines 34-40);

projecting a message to potential customers in said advertising space with a display (see column 1, lines 40-50).

Sizer fails to teach, detecting in direct sequence a number of potential customers with the first sensor. However, Frey teaches a system that counts all potential customers in a retail store, generates information about in and out shopper flow, and integrates this data with the store's point of sale system (see column 1, lines 9-23 and column 3, lines 10-67). The system allows for "controlled tests to be conducted in paired media markets to accurately measure the increased traffic created by individual ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertising or special events delivered increased shopper units, and whether such increase in shopper units resulted in expected increased sales" (see column 3, lines 43-53). The data generated from the Frey invention, together with the

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data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions. Frey's system may be used to measure the impact of competitor's advertising on a store's performance, and the data from the system may be used in determining the effectiveness of in-store promotions as well as merchandise placement within the store (see column 3, lines 42-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to analyze the impact of advertisements messages, as taught by Frey. Sizer mentions in lines 55-65 of column 1 that "prior art devices attempt to detect the presence of a person and to deliver a message to the person on detection of their presence. The problem with the majority of such devices, however, is that they do not operate to discriminate between people detected by the device. The message will be delivered whether or not the person has indicated any particular interest in the message or whether or not the person would be likely to be interested in the message". The Sizer invention provides a message delivery device that detects the presence of a person and delivers a message if the person shows interest and also uses demographics to target messages (see column 6, lines 11-15). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would be an improvement to the old method of delivering advertising. Sizer may deliver advertisements whether or not the consumer has indicated any interest and the data generated from the Frey invention together with the

data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions.

Sizer et al fail to teach:

detecting the number of potential customers that exit with the second sensor;

determining actual customers of said potential customers who purchased at least one product projected in said message; and

recording and correlating the number of the potential customers and the actual customers.

However, Frey teaches a system that detects the number of actual buyers and what products they have bought, to help store managers identify problem areas and take corrective measures to improve store performance (see column 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would integrate its audiovisual marketing device to the store point of sale system, as taught by Frey. Knowing what customers buy would help the Sizer et al system to better target its advertisements.

As per claim 31, Sizer et al teach:

A method for detecting customer behavior according to claim 30, wherein the message is one of a visual message and an audiovisual message (see abstract).

As per claim 32, Sizer et al fail to teach:

A method for detecting customer behavior according to claim 30, wherein a message is only projected to potential customers if the number of potential customers detected in direct sequence with the first sensor exceeds the number potential customers that exit detected with the

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second sensor. However, Frey teaches a system that, “generates highly reliable count information of in and out shopper flow” and where the “optics module device may be mounted overhead such as above the doorway where the customers enter and leave the store. From data generated from the system together with data from other store systems including the POS system, advertising and special event effectiveness may be evaluated” (see column 3, lines 14-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to determine the effectiveness of advertisement messages, as taught by Frey. The Sizer invention would use the in and out sensors taught by Frey to determine the presence of potential customers, and to better deliver advertisements.

As per claim 33, Sizer et al teach:

A method for detecting customer behavior according to claim 30, wherein the step of recording and correlating data is via a worldwide link (see figure 5).

As per claim 34, Sizer et al teach:

A method for detecting customer behavior according to claim 30, farther comprising the step of providing a third sensor between the advertising space and the sales space (see column 5, lines 20-24).

As per claim 35, Sizer et al teach:

A method for detecting customer behavior according to claim 30, wherein the advertising space and the sales space coincide (see column 2, lines 39-51).

As per claim 36, Sizer et al teach:

A method for detecting customer behavior according to claim 30, wherein potential customers are further detected in the advertising space (see column 39-67).

Claim 37 is written as an apparatus but contains the same limitation as claim 30 therefore the same rejection is applied.

As per claim 38, Sizer et al fail to teach:

An apparatus for detecting consumer behavior according to claim 37, wherein the computer controls the unit so that a message is only presented when the number of potential customers detected with the first sensor exceeds the number of potential customers that exit detected with the second sensor. But, the Frey invention, in lines 14-16 of column 3, teaches a system with multiple optic modules to insure that all shoppers entering and leaving the store are detected. Frey also fails to teach the delivery of a message when a potential customer is detected. However, Seizer teaches a system that delivers messages when a potential customer is detected (see column 2, lines 30-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use the Seizer invention to display advertisement to customers, but would only display advertisements when it detects the presence of a person. Frey would use the in and out sensors to determine if there are still customers in the store and would use the Seizer system to target advertisements. There would be no use in displaying a message when there is no one there to see it.

As per claim 39, Sizer et al teach:

An apparatus for detecting consumer behavior according to claim 37, wherein the message is one of a visual message and an audiovisual message (see column 2, lines 30-67).

As per claim 40, Sizer et al teach:

An apparatus for detecting consumer behavior according to claim 37, further comprising a central control unit for controlling said computer (see figure 5).

As per claim 41, Sizer et al fail to teach:

An apparatus for detecting consumer behavior according to claim 37, further comprising a third sensor for detecting the number of potential customers that exit the advertising region located between said first sensor and said second sensor. However, Frey teaches a system that counts all potential customers in a retail store, generates information about in and out shopper flow, and integrates this data with the store's point of sale system (see column 1, lines 9-23 and column 3, lines 10-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to analyze the impact of advertisements messages, as taught by Frey.

As per claim 42, Sizer et al teach:

An apparatus for detecting consumer behavior according to claim 37, wherein the advertising region and the sales region coincide (see column 2, lines 40-51).

As per claim 43, Sizer et al teach:

An apparatus for detecting consumer behavior according to claim 37, wherein potential customers are further detected in the advertising space (see column 2, lines 40-51).

Claims 9, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sizer et al (U.S. 5,923,252) in view of Frey (U.S. 5,138,638) and further in view of Fraser (U.S. 5,620,061).

As per claim 9, Sizer et al fail to teach:

An arrangement according to claim 4, wherein a fiber-optical display is employed.” However, Fraser teaches of the delivery of advertisements using a fiber optical display (see column 4, lines 1-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would utilize fiber optical displays, as taught by Fraser. Utilizing fiber optical displays would allow the Sizer et al system to deliver high bandwidth data, such as videos.

As per claims 11 and 17, Sizer et al fail to teach:

An arrangement according to claim 4 or 9, wherein the display is arranged suspended in suitable manner.” However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it.

Claims 22-26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frey (U.S. 5,138,638) in view of Sizer et al (U.S. 5,923,252).

As per claim 22, Frey teaches:

An apparatus for detecting consumer behavior comprising:

a first sensor for detecting in direct sequence a number of potential customers (see column 3) ;

a second sensor for detecting the number of potential customers that exit (see column 3, lines 14-20);

a register for determining actual customers of said potential customers who purchased at least one product presented in said message (see column 3, lines 43-53);

a computer for recording and evaluating the number of potential customers and the number of actual customers and for controlling said unit (see column 3, lines 43-66);

Frey describes that "controlled tests can be conducted in paired media markets to accurately measure the increase traffic created by individuals ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertisement delivered increase shopper units, and whether such increase in shopper units resulted in the expected increased sales" (see column 3, lines 42-53). Frey does not mention a unit for presenting messages, however Sizer et al teach in lines 55-64 of column 1, of units that detect the presence of a person and that deliver messages to the person on detection of their presence. The message is delivered whether or not the person has indicated any particular interest in the message. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use the units described in Sizer to deliver messages to customers and to determine the success of a marketing campaign. As long as Frey matches the displayed advertisements with the increase traffic sale, it

would not matter if the advertisements are shown on TV, in a store, or in another location.

As per claim 23, Frey fails to teach:

An apparatus for detecting consumer behavior according to claim 22, wherein the computer controls the unit so that a message is only presented when the number of potential customers detected with the first sensor exceeds the number of potential customers that exit detected with the second sensor. But, the Frey invention, in lines 14-16 of column 3, teaches a system with multiple optic modules to insure that all shoppers entering and leaving the store are detected. Frey also fails to teach the delivery of a message when a potential customer is detected. However, Seizer teaches a system that delivers messages when a potential customer is detected (see column 2, lines 30-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use the Seizer invention to display advertisement to customers, but would only display advertisements when it detects the presence of a person. Frey would use the in and out sensors to determine if there are still customers in the store and would use the Seizer system to target advertisements. There would be no use in displaying a message when there is no one there to see it.

As per claim 24, Frey fails to teach, an apparatus for detecting consumer behavior according to claim 22, wherein the message is one of a visual message and an audiovisual message. However, Seizer teaches a system that delivers audio and visual messages upon detecting the presence of a person (see column 2, lines 30-67

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and column 4, lines 10-17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey, upon detecting the presence of a potential customer, would deliver advertisements to that customer, as taught by Seizer. Adding the Seizer message delivery device to Frey would help it to better target advertisements and to better determine whether the advertisement or special event message delivered have increased the shoppers units, and whether such increase in shopper units resulted in the expected increased sales.

As per claim 25, Frey teaches:

An apparatus for detecting consumer behavior according to claim 22, further comprising a central control unit for controlling said computer (see column 3, lines 27-33).

As per claim 26, Frey fails to teach an apparatus for detecting consumer behavior according to claim 22, wherein said unit is suspended at an angle. However, Seizer teaches a system that delivers audio and visual messages upon detecting the presence of a person (see column 2, lines 30-67 and column 4, lines 10-17). Seizer does not mention that the display is suspended at an angle. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer system would arrange the display in the best position for the customer to see it, be it suspended at an angle or otherwise.

As per claim 28, Frey fails to teach,

An apparatus for detecting consumer behavior according to claim 22, wherein said unit is a plurality of units. Seizer teaches a plurality of units that upon detecting the

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presence of a person deliver audio and visual messages (see column 2, lines 30-67 and column 4, lines 10-17 and column 5, lines 20-24). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would deliver advertisement to a potential customer upon detecting the presence of that customer, as taught by Seizer. Adding the Seizer message delivery device to Frey would help it to better target advertisements and to better determine whether the advertisement or special event message delivered have increased the shoppers units, and whether such increase in shopper units resulted in the expected increased sales.

As per claim 29, Frey teaches:

An apparatus for detecting consumer behavior according to claim 22, further comprising a third sensor for detecting removal of a product (see column 3, lines 10-32).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frey (U.S. 5,138,638) in view of Sizer et al (U.S. 5,923,252) and further in view of Fraser (U.S. 5,620,061).

As per claim 27, Frey fails to teach an apparatus for detecting consumer behavior according to claim 22, wherein said unit is a fiber optic display. However, Fraser teaches of the delivery of advertisements using a fiber optical display (see column 4, lines 1-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use fiber optical displays to deliver advertisement, as taught by Fraser. The Frey invention would determine whether the advertisements or special event messages delivered have increased the shopper units, and whether such increase in shopper units resulted in the

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expected increased sales (see column 3, lines 42-53). The Fiber optical displays would show the advertisement and the Frey invention would analyze the effect on the customers.

Response to Arguments

3. The Applicant's arguments filed 10/23/02 have been fully considered but they are not persuasive.

The Applicant argues that Sizer does not detect in direct sequence all potential customers that pass a first sensor.

The Examiner answers that Frey teaches a system that counts all potential customers in a retail store, generates information about in-and-out shopper flow, and integrates this data with the store's point of sale system (see column 1, lines 9-23 and column 3, lines 10-67). The system allows for "controlled tests to be conducted in paired media markets to accurately measure the increased traffic created by individual ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertising or special events delivered increased shopper units, and whether such increase in shopper units resulted in expected increased sales" (see column 3, lines 43-53). The data generated from the Frey invention together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions. The Frey system would be used to measure the impact of a competitor's advertising on a store's performance, and the data from the system would be used in determining the effectiveness of in-store promotions as well as merchandise placement within the store (see column 3, lines 42-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in-and-out shopper flow and would integrate this data with the POS system to analyze the impact of advertisements messages, as taught by Frey. Sizer mentions in lines 55-65 of column 1 that "prior art devices attempt to detect the presence of a person and to deliver a message to the person on detection of their presence. The problem with the majority of such devices,

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however, is that they do not operate to discriminate between people detected by the device. The message will be delivered whether or not the person has indicated any particular interest in the message or whether or not the person would be likely to be interested in the message". The Sizer invention provides a message delivery device that detects the presence of a person and delivers a message if the person shows interest and also uses demographics to target messages (see column 6, lines 11-15). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would be an improvement to the old method of delivering advertising. Sizer would deliver advertisements whether or not the consumer has indicated any interest, and the data generated from the Frey invention together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 7:30-3:30.

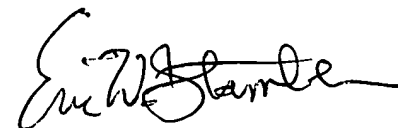
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

D.L.

Daniel Lastra

January 5, 2003



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